

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KLEEN PRODUCTS LLC,)	No. 10 C 5711
)	
Plaintiff,)	Chicago, Illinois
)	October 4, 2010
)	9:15 o'clock a.m.
-vs-)	
)	
PACKAGING CORPORATION OF)	
AMERICA, et al.,)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HONORABLE MILTON I. SHADUR

APPEARANCES:

For the Plaintiff:	FREED KANNER LONDON & MILLEN LLC 2201 Waukegan Road, Suite 130 Bannockburn, Illinois 60015 BY: MR. STEVEN A. KANNER and THE MOGIN LAW FIRM 707 Broadway, Suite 1000 San Diego, California 92101 BY: MR. DANIEL J. MOGIN
For the Defendant Packaging Corp.:	KIRKLAND & ELLIS LLP 300 North LaSalle Street Chicago, Illinois 60654 BY: MR. DOUGLAS J. KURTENBACH MR. DANIEL E. LAYTIN
For the Defendant International Paper:	NEAL GERBER & EISENBERG Two North LaSalle Street, Suite 1700 Chicago, Illinois 60602 BY: MR. SCOTT J. FISHER
Court Reporter:	ROSEMARY SCARPELLI 219 South Dearborn Street, Room 1412 Chicago, Illinois 60604 (312) 435-5815

1 APPEARANCES: (Cont.)

2 For the Defendant MAYER BROWN LLP
3 Temple-Inland, Inc.: 71 South Wacker Drive
Chicago, Illinois 60606
4 BY: MS. BRITT M. MILLER

5 For the Defendant WINSTON & STRAWN LLP
6 Smurfit-Stone 35 West Wacker Drive
Container: Chicago, Illinois 60601
7 BY: MR. R. MARK McCAREINS
MR. JAMES F. HERBISON

8 ALSO PRESENT: MR. TREY NICOUD

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1 THE CLERK: 10 C 5711, Kleen Products versus
2 Packaging Corporation of America.

3 MR. KANNER: Good morning, your Honor, Steve Kanner
4 on behalf of plaintiffs from the Freed Kanner firm. And I
5 would like to present to this Court and introduce Dan
6 Mogin --

7 MR. MOGIN: Good morning, your Honor.

8 THE COURT: Good morning. Welcome.

9 MR. KANNER: -- on behalf of the plaintiffs, your
10 Honor.

11 MR. FISHER: Good morning, your Honor, Scott Fisher
12 on behalf of International Paper Company. And with me is
13 Trey Nicoud whose pro hac application is being entered this
14 morning, I believe, your Honor.

15 MR. NICOUD: Good morning, your Honor.

16 THE COURT: Good morning. Welcome.

17 MR. MCCAREINS: Good morning, your Honor, Mark
18 McCareins and Jim Herbison from Winston & Strawn on behalf of
19 Smurfit Stone Container.

20 MS. MILLER: Good morning, your Honor, Britt
21 Miller, Mayer Brown, on behalf of the Temple-Inland.

22 THE COURT: All right. Anybody here for
23 Weyerhaeuser or --

24 MR. KURTENBACH: Your Honor, I am Doug Kurtenbach,
25 and I am here with Dan Laytin on behalf of Packaging

1 Corporation of America. And I think that is the group.

2 MR. NICLOUD: Your Honor, with respect to
3 Weyerhaeuser, International Paper Company purchased the
4 business assets of Weyerhaeuser relating to this business.

5 THE COURT: Ah.

6 MR. NICLOUD: And we -- we are still in the process
7 of determining whether Weyerhaeuser will have separate
8 counsel or not.

9 THE COURT: And what is Norampac?

10 MR. NICLOUD: Norampac, your Honor, is a joint
11 venture, I believe, among Cascades and Domtar. At least at
12 one point I believe that is the circumstance.

13 THE COURT: All right. I was just trying to figure
14 out -- you can't get players without a score card, I guess.
15 This is the first time all of you people have assembled, you
16 know, in connection with this lawsuit. And I suppose I ought
17 to say something in the interests of full disclosure,
18 although I don't think it is something that would require
19 recusal.

20 One of the things that drove me to law school, one
21 of the principal things, was that after I emerged from the
22 service after World War II I was a partner with my brother in
23 the paper box industry -- and paper box, that is a
24 glorification -- a small paper box company in Des Moines,
25 Iowa. And I -- I know we wondered at the time how it was

1 that the only supplier that we could deal with -- now, you
2 understand this was not corrugated. This was paper boxes,
3 you know, the shirt boxes, candy boxes and so on, in which
4 you, know, you buy -- you don't buy in rolls, you buy in
5 sheets. And you try to figure out in advance what size sheet
6 you need for what size box.

7 And I was saying, my brother and I wondered why it
8 was that the only outfit we could deal with was the Tama
9 Mills in Tama, Iowa. And I didn't know until years later,
10 you see, when I not only got to law school but emerged from
11 law school, we were targets of what turned out to be an
12 antitrust conspiracy, which turned out to be the litigation
13 that all of us know about in Philadelphia, Pennsylvania.

14 So I -- I am not ascribing anything to the
15 defendants here. I simply wanted to let you know that I had
16 some -- in my misspent youth I had some contacts with the --
17 with the problem of this nature of the kind that is charged
18 here, and I learned much later actually existed there.

19 So I -- as I say, I put that in category of
20 disclosure but not something that, as I think of it, would
21 call for my recusal in this case because, I can assure you, I
22 have no factual predilections here.

23 So now I see -- and, by the way, and that is the
24 reason that -- although I didn't realize that we were going
25 to assemble so many people at such great expense, I

1 ordinarily -- you know, when I am asked for extensions of
2 time, that is sort of a no-brainer and I simply grant that as
3 a matter of course. But I did feel a responsibility to
4 apprise everybody of the -- this background situation.

5 Now, with that said, I also noted that the -- that
6 there are other actions pending and -- and that is the other
7 reason that I wanted you people to assemble, because what is
8 talked about here is a consolidation. And, of course,
9 consolidation is a term of art. It is something that is
10 specifically provided for in the Federal Rules of Civil
11 Procedure, but it doesn't automatically flow from the
12 presence of related actions.

13 The -- our concept, as I think everybody knows,
14 under Local Rule 40.4 of reassignment on grounds of
15 relatedness requires not only relatedness, which is an easy
16 one, because that is -- there are four things in -- in
17 40.4(a). They are stated in disjunctive. And almost any
18 action is going to be related to any other one on some
19 concept of that. The tough part is 40.4(b) which is stated
20 in the conjunctive and all four things have to be satisfied
21 in order to do that.

22 So very often what we get in our Court is that
23 actions that have been assigned at random, as they always
24 are, to different judges' calendars may stay on the calendars
25 of those judges, with the most usual arrangement being that

1 the judge with the lowest-numbered case may act sort of to
2 monitor the discovery process, and -- and usually coupled
3 with orders in individual courts that say that discovery in
4 Case A is also going to apply to Case B, so you don't have to
5 be plowing the same field all over again. You take a
6 deposition, a person's deposition, once. Anybody who is a
7 participant in any of the cases, you know, participates in
8 the deposition so you don't have to repeat it.

9 So I make this point so that when you talk about a
10 consolidated complaint as in prospect, that the thing that I
11 think would have to be done first would be to have a motion
12 for reassignment on grounds of relatedness to bring all the
13 cases on the calendar of the same judge.

14 Now, although very often lawyers who, you know,
15 don't fully follow or aren't accustomed to following our
16 local rule may founder on -- usually on the fourth part of
17 40.4(b), which is the -- that the things can be resolved in a
18 single proceeding because single proceeding, as we have
19 applied it, always means a single trial. And that doesn't
20 necessarily follow, you know, but it sounds to me as though
21 it may be likely that these actions could qualify for that.
22 But I want to leave that to you people to sort out.

23 But my notion is that probably step one ought to
24 be, if it fits, to file a motion for reassignment on
25 relatedness grounds. I guess I have got the lowest-numbered

1 one, so I would be stuck anyway. And then at that point
2 consider the possibility whether you can or cannot actually
3 go to consolidate. I think it is Rule 42 that deals with
4 that.

5 Now, is there anybody who either doesn't have
6 familiarity with that or for whom my suggestion you think
7 creates a possible problem? Anybody?

8 Okay. So I have no problem with the extension of
9 time and -- and that is granted. And I would -- I will
10 simply -- let me get this -- and, you see, you framed that in
11 terms of days after filings and so on. And you have
12 committed the cardinal sin that you have to pick numbers that
13 are divisible by seven, which is what we always do these
14 days. They finally caught up to the calendar, you know, and
15 so all the -- all the rules have been amended now. So we are
16 talking about 49 and 91 and so on. Okay?

17 So I am not going to grant the part of it that sets
18 a time frame yet because you will want to think about that.
19 I am simply granting sort of an open-ended extension of time.
20 And what I do instead is to set a status date that will give
21 you time to consider the things I have talked about, and it
22 is really a place-keeping date more than anything else
23 because what will happen is that once you do that and have
24 talked among yourselves about the timing here, then you can
25 let Sandy know and, if need be, I will simply change the date

1 in addition to granting whatever motion has to be dealt with
2 there.

3 So with that in mind, I suppose that maybe
4 something like 63 days would be a decent period of time. And
5 63 days would put us into December. Wait just a minute.
6 December 13th. That is a Monday. That is 63 days.

7 Now, again, there is no magic about that date. It
8 is likely to get replaced for the reasons I have just talked
9 about. So unless there is something specially bad about that
10 for anybody, let's call it 63 days for status. That is
11 December 13th at 9:00 o'clock for status. That vacates my
12 previous setting which had been November 4th. So that
13 November 4th is replaced by December 3rd -- 13th, rather, at
14 9:00 o'clock. And in the meantime I will look forward to
15 getting whatever you resolve doing as a result of this
16 morning's discussion.

17 Now, is there anything else you think ought to be
18 taken care of now?

19 MR. KANNER: Your Honor, Steve Kanner again for
20 plaintiffs.

21 THE COURT: Yeah.

22 MR. KANNER: You have contemplated most of the
23 issues that we would have raised today, and so we appreciate
24 that. And we appreciate your disclosure certainly, your
25 Honor. We intend to file a motion for relatedness. We were

1 simply waiting, because we understand from other counsel,
2 that additional complaints may be filed. I would like to
3 avoid filing duplicative motions. And so your Honor's date
4 of 63 days --

5 THE COURT: Why don't you -- why don't you file it.
6 And then as others may come in, if they are really
7 duplicative, you can just treat those as follow-up motions.
8 I mean why wait --

9 MR. KANNER: I am perfectly --

10 THE COURT: -- until you think that -- that people
11 who are out there in the woodwork are going to emerge at some
12 point? You don't know who they are and you don't know when
13 they are going to file something. So it seems to me --

14 MR. KANNER: We will do so, your Honor.

15 THE COURT: -- it doesn't seem to make a lot of
16 sense simply to wait on the possibility.

17 MR. KANNER: Well, it is more than that. We have
18 heard from other firms about their interest in filing. If
19 nothing is filed by the end of this week --

20 THE COURT: Yeah.

21 MR. KANNER: -- we will move ahead with that.

22 THE COURT: That is fine.

23 Anybody else have anything that hasn't been covered
24 here?

25 MR. No, your Honor. Thank you.

1 MR. FISHER: Thank you.

2 THE COURT: All right. Thank you all.

3 MR. KANNER: Thank you for having us.

4 MR. MOGIN: Have a nice day.

5 MR. MILLER: Thank you.

6 MR. MCCAREINS: Thank you.

7 MR. HERBISON: Thank you.

8 MR. KURTENBACH: Thank you.

9 MR. LAYTIN. Thank you.

10 (Which were all the proceedings heard.)

11 CERTIFICATE

12 I certify that the foregoing is a correct transcript
13 from the record of proceedings in the above-entitled matter.

14

15 s/Rosemary ScarPELLi/

Date: October 7, 2010

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